THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 19073 of 2005

Date 30.08.2005

Between:

M/s. Sandvik Smith Asia Limited.

..... PETITIONER

AND

District Collector, Registration and Stamps Department,
Government of Andhra Pradesh at Sangareddy & others.

.....RESPONDENTS

The Court made the following Order:

A Business Purchase Agreement was entered into between the petitioner Company and M/s. Kennametal Widia India Limited (for short' KWIL'), whereunder the mining and construction division of KWIL based at Patancheru, Medak District was agreed to be purchased by way of slump sale as a going concern at a lump sum consideration of Rs.64,90,40,000/-. The petitioner-Company paid an amount of Rs.21,06,9000/- towards stamp duty and Rs.1,75,575 towards Registration Fees on the assessed value of Rs.3,51,14,884/- towards the value of Land and Buildings and plant and Machinery. As the second respondent was not accepting the stamp duty paid by the petitioner-Company, it filed an adjudication application before the first respondent under Section 31 of the Indian Stamp Act, 1899, (for short 'the Act') requesting to adjudicate the agreement @ 5% Stamp Duty on the value of Rs.3,51,14,884/-. By order dated 15.03.2005, the first respondent disposed of the adjudication application holding that since the transaction is related to slump sale of the business as a whole including lands and Buildings; plant and Machinery, transfer of licences, intangibles, goodwill, transfer of working employees, receivables, other movables etc., the transaction has to be taken into its entirety and not individually; and that the Business Purchase Agreement is not expressing at which value the immovable properties are arrived at and purchase price is for all items mentioned in the agreement and as such, the whole transaction has to be treated as single transaction for all the various items mentioned in the Business Purchase Agreement with possession and levied the stamp duty as per Article 47-A (Explanation-I) of the Schedule I-A of the Indian Stamp Act, 1899 (for short 'the Act') at 6% on Rs.64,90,40,000/-. Aggrieved thereby, the petitioner company filed this writ petition praying that a Writ of Mandamus may be issued to cancel the order dated 15.03.2005 and that the third respondent may be ordered to refer the matter to the High Court.

Sri E.P.Bharucha, learned Senior counsel appearing for the petitioner-Company contended that under Section 57(1), the Chief Controlling Revenue Authority may state any case referred to it under Section 56, sub-section(2), or otherwise coming to its notice, and refer such case, with its own opinion

thereon: (a) if it arises in a Sate, to the High Court for that State; even though the Collector did not refer the matter, if the Chief Controlling Authority has otherwise come to his notice, that it involves substantial question of law in the application filed by the petitioner, he can refer the matter to the High Court. In support of his contention, he placed reliance on **Ghatge and Patil Concerns' Employees' Union, v. Ghatge and Patil (Transports) Private Ltd** and **Chief Controlling revenue Authority v. Maharashtra Sugar Mills Ltd**.

On the other hand, learned Government Pleader for Revenue contended that the question of reference by the Chief Controlling Authority to the High Court does not arise unless the Collector refers the matter to the Chief Controlling Authority for his opinion and in this case, the Collector did not refer the case as required under Section 56(2) of the Act.

The decisions of the Apex Court would clearly indicate that if there is an application for reference involving substantial question of law, the matter has to be referred to the High court in terms of Section 57(1). The words in Section 57(1) "otherwise coming to its notice" would include the application filed by the petitioner company in this case. Admittedly, the petitioner-Company filed an application on 26.05.2005. The Chief Controlling Authority has to take appropriate decision in accordance with law.

Therefore, without expressing any opinion, I dispose of the writ petition directing the third respondent to pass appropriate orders within a period of two months, from the date of receipt of a copy of this order, after affording reasonable opportunity to both the parties. The other reliefs sought for by the petitioner are not being pressed for the present.

Accordingly, the writ petition is disposed of. No costs.

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30.08.2005

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